

## REMARKS

This is a full and timely response to the outstanding final Office Action mailed July 26, 2005. Through this response, there are no amendments. Claims 3-18 have been previously canceled. Claims 1, 2 and 19-40 are pending in the present Application. In view of the following remarks, reconsideration and allowance of the Application, and presently pending claims, are respectfully requested.

### I. Allowable Subject Matter

Applicant greatly appreciates the Examiner's statement in the Office Action in which claim 1, 19-38 and 40 have been indicated as allowable.

### II. Response to Rejections under 35 U.S.C. § 103(a)

#### A. Statement of the Rejection

Independent claim 2 and claim 39, that depends upon claim 2, stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,157,395 to Del Signore *et al.*, hereinafter referred to as *Del Signore*, in view of U.S. Patent No. 5,579,247 to Kerth *et al.*, hereinafter referred to as *Kerth*, and further, in view of U.S. Patent No. 6,108,622 to Xue *et al.*, hereinafter referred to as *Xue*. Applicant respectfully traverses this rejection and submits that this rejection should be withdrawn because: 1) the combination of the references does not disclose, teach or suggest all of the elements of the claims; and 2) the references are not properly combinable to support the rejection.

#### B. The Combination of *Del Signore*, *Kerth* and *Xue* Does Not Disclose, Teach or Suggest All Elements of Claim 2.

It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach or suggest either implicitly or explicitly all elements, features or steps of the claim at issue. *See e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Independent claim 2 recites:

2. A system, comprising:  
***a material metering machine comprising a decimation element, the decimation element configured to reduce an initial sampling rate of a digital signal to a reduced sampling rate; and***  
a filter bank, the filter bank comprising:  
an input node adapted to receive the digital signal from the decimation element, ***the digital signal having noise from the material metering machine; and***  
selectable filters, each selectable filter having a sub-hertz 3-dB cutoff frequency, each filter being configured to reduce the noise.

***(Emphasis Added)***

Independent claim 2 is allowable over *Del Signore* in view of *Kerth* and *Xue* for at least the reason that none of the three references discloses, teaches or suggests the features that are highlighted in independent claim 2 above. More specifically, none of the three references discloses, teaches or suggests “a system comprising a material metering machine”, let alone “a material metering machine comprising a decimation element, the decimation element configured to reduce an initial sampling rate of a digital signal to a reduced sampling rate” with “the digital signal having noise from the material metering machine.”

The Office Action acknowledges that *Del Signore* “does not specifically disclose a system that comprises a material metering machine which comprises a decimation element.” *Office Action*, pp. 2-3. However, it is further asserted in the Office Action that *Kerth* “discloses a system (fig. 1) that comprises a material metering machine (12) which comprises a decimation element.” *Office Action*, p. 3. *Kerth* does not suggest a system that comprises a material metering machine. Element 12 in *Kerth* is a ratiometric circuit or converter, not a material metering machine. See, e.g. Col. 4, lines 2 and 54. Specifically, and regarding the decimation element, *Kerth* recites a “time multiplex digital filter” that is “a time multiplex decimation filter which has characteristics shown in FIG. 4”. See, *Kerth*, Col. 5, lines 21-24. However, FIG. 4 does not address a reduced sampling rate of a digital signal. Indeed, *Kerth* does not appear to address the reduction

of a sampling rate of a digital signal at all. The Office Action acknowledges this point also. The Office Action states that the combination of *Del Signore* and *Kerth* do not disclose a “material metering machine comprising a decimation element, the decimation element is configured to reduce an initial sampling rate of a digital signal to a reduced sampling rate.” *Office Action*, p. 3.

It is asserted in the Office Action, however, that *Xue*, “in a related field, discloses a system (figs. 1-5) machine comprising a decimation element, the element is configured to reduce an initial sampling rate of a digital signal to a reduced sampling rate.” *Office Action*, p. 3. Thus, the Office Action relies upon *Xue* to make up for those features of claim 2 that *Del Signore* and *Kerth* fail to teach or suggest. Applicant respectfully disagrees with this characterization of *Xue*.

*Xue* discloses a component for use in a multimedia center. *Xue* does not disclose, teach or suggest a system comprising a material metering machine. *Xue* refers to its device as an “audio decoder.” Additionally, for example, at column 4, lines 10-15, *Xue* recites:

The device 102 provides **audio and video signals** to the display monitor 106, and can accept audio and video signals from a television tuner or some other source. The **received video and audio signals are converted to digital video and audio signals** by A/D converters 200, 201.

*(Emphasis added.)*

And further, *Xue* recites:

A second output buffer configured to buffer a sequence of **decimated audio samples** and configured to provide the sequence of **decimated audio samples** to a second output device for audio reproduction at a reduced sampling frequency ...

*Column 14, lines 22-26. (Emphasis added.)*

*Xue* thus teaches the processing of audio signals, which are small signal A.C., and does not address the processing of a D.C. signal, for the purpose of removing small signal A.C. Further, *Xue* does not even address the issue of filtering the noise created by machines in an industrial environment, such as for example a material metering machine. Since *Xue*

does not teach a system comprising a material metering machine, there is no discussion of processing a “digital signal having noise from the material metering machine”, or any other industrial type device.

Accordingly, even if *Del Signore*, *Kerth* and *Xue* were properly combinable, the combination would not produce the invention as in Claim 2, namely a system comprising a material metering machine wherein the system includes a decimation unit for receiving a digital signal and configured to reduce an initial sampling rate of the digital signal, and includes a filter bank adapted to receive the digital signal from the decimation unit wherein the digital signal has noise from the material metering machine. For at least the reasons cited above, Applicant respectfully submits that the rejection of Claim 2 should be withdrawn since the combination of *Del Signore*, *Kerth* and *Xue* fails to disclose, teach or suggest all of the elements and features of Claim 2.

C. The Rejection of Claim 2 Is Improper Because There Is No Motivation To Combine *Del Signore*, *Kerth* and *Xue*.

Claim 2 is additionally allowable for the reason that no motivation exists to combine *Del Signore*, *Kerth* and *Xue*. To establish a motivation to combine, the PTO “must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *Beckson Marine, Inc. v. NFM, Inc.*, 292 F.3d 718, 728 (Fed. Cir. 2002). The “showing of motivation to combine must be clear and particular, and it must be supported by actual evidence.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1334 (Fed. Cir. 2002). Applicant respectfully submits that no such motivation is shown in the Office Action to exist to support combining *Del Signore*, *Kerth* and *Xue*.

As noted above, the combination of *Del Signore* and *Kerth* do not disclose a “material metering machine comprising a decimation element, the decimation element configured to reduce an initial sampling rate of a digital signal to a reduced sampling rate.” Further, *Xue* does not remedy this deficiency and, as shown above does not teach or suggest a system comprising a material metering machine, let alone address a “digital signal having noise from” a “material metering machine.”

Further, as noted above, *Xue* teaches the processing of audio signals in a multimedia center. Applicant respectfully submits that the processing of audio signals in a multimedia environment cannot be considered related in any meaningful way to an industrial application for reducing line noise in a system comprising a material metering machine. Further, as argued above, even if *Xue* does provide decimated signals, there is no discussion of processing a “digital signal having noise from” a “material metering machine”, or any other industrial type device. Applicant respectfully submits that industrial line noise is very different from audio signals in a multimedia environment. In that processing audio signals (small A.C.) is very different from filtering the small A.C. from a D.C. signal. In addition, Claim 2 recites that each selectable filter in the filter bank as a sub – hertz 3-dB cutoff frequency. This is below the accepted audio range of 20 Hz to 20 KHz. It is clear that no motivation exists to make a combination of elements from the cited references to achieve the subject matter recited in Claim 2. There is no motivation to combine the audio decoder of *Xue* and its decimation element for operating on audio signals in the 20 Hz to 20KHz range with the filter bank of *Del Signore* that operates outside (below) the frequency range on which *Xue* is intended to operate. “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d 238, 147 U.S.P.Q. 391, 393 (C.C.P.A. 1965). As a result, the rejection should be withdrawn.

D. Claim 39

Claim 39 is dependent upon Claim 2 and is asserted to be allowable for the same reasons stated above for Claim 2.

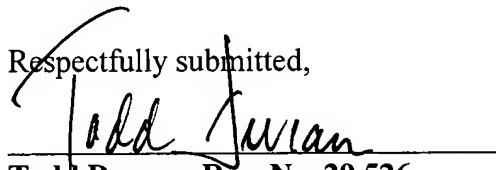
V. Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

## CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1, 2 and 19-40, are in condition for allowance. Favorable consideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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